Scanned

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM ROBERT BILL Plaintiff vs. COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF STATE POLICE, et. al. Defendants	:	CIVIL ACTION NO. ~~95-154~~ 05-154

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS PURSUANT TO FRCP 12(B)(6)

And now, comes the Plaintiff, by and through his undersigned counsel, responding to Defendants' Motion to Dismiss pursuant to FRCP 12(B)(6) as follows:

1. Denied. To the contrary, Plaintiff originally filed this matter in the Court of Common Pleas of Philadelphia County. It was removed to Federal Court by Defendants and transferred to the Western District pursuant to Motion.

2. Denied as stated. The Complaint is a written document and speaks for itself. A copy of the Complaint is attached and marked as Exhibit "A" and is incorporated herein by reference.

3. Denied as stated. The Complaint is a written document and speaks for itself.

4. Denied. The averments contained in this paragraph are conclusions of law and deemed denied as such by the Federal Rules of Civil Procedure.

5. Denied. The averments contained in this paragraph are conclusions of law and deemed denied as such by the Federal Rules of Civil Procedure.

6. Denied. The averments contained in this paragraph are conclusions of law and deemed denied as such by the Federal Rules of Civil Procedure.

7. Denied. The averments contained in this paragraph are conclusions of law and deemed denied as such by the Federal Rules of Civil Procedure.

8. Denied. The averments contained in this paragraph are conclusions of law and deemed denied as such by the Federal Rules of Civil Procedure.

Wherefore Plaintiff respectfully requests that this Honorable Court deny Defendants' Motion in its entirety.

Respectfully submitted by:
KANE & SILVERMAN, P.C.

By: S/Steven C. Feinstein
Steven C. Feinstein, Esquire
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA

WILLIAM ROBERT BILL Plaintiff vs. COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF STATE POLICE, et. al. Defendants	:	CIVIL ACTION NO. 95-154

CERTIFICATE OF SERVICE

I, Steven C. Feinstein, Esquire, certify that on this 8th day of July , 2005, I forwarded a copy of Plaintiff's Answer to Defendants' Motion to Dismiss Pursuant to FRCP 12(b)(6) to the following:

Mary Lynch Friedline
564 Forbes Avenue, Manor Complex
Pittsburgh, PA 15219

Respectfully submitted by:
KANE & SILVERMAN, P.C.

By: S/Steven C. Feinstein
Steven C. Feinstein, Esquire
Attorney for Plaintiff

Exhibit A

Court of Common Pleas of Philadelphia County
Trial Division
Civil Cover Sheet

For Prothonotary Use Only (Docket Number)
JANUARY 2005 000523

PLAINTIFF'S NAME William Robert Bill	DEFENDANT'S NAME COMMONWEALTH OF PA, DEPT. OF STATE POLICE
PLAINTIFF'S ADDRESS 21498 Phelps Road Meadville, PA 16335	DEFENDANT'S ADDRESS 11176 Murray Road Meadville, PA 16335
PLAINTIFF'S NAME	DEFENDANT'S NAME TROOPER VICTOR J. STERNBY
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS 11176 Murray Road Meadville, PA 16335
PLAINTIFF'S NAME	DEFENDANT'S NAME COLONEL JEFFREY B. MILLER
PLAINTIFF'S ADDRESS	DEFENDANT'S ADDRESS c/o Commonwealth of PA, Dept. of State Police 1800 Elmerton Ave., Harrisburg, PA 17110

TOTAL NUMBER OF PLAINTIFFS	TOTAL NO. OF DEFENDANTS	COMMENCEMENT OF ACTION
1	3	☑ Complaint ☐ Petition Action ☐ Notice of Appeal ☐ Writ of Summons ☐ Transfer From Other Jurisdictions

AMOUNT IN CONTROVERSY
- ☐ $50,000.00 or less
- ☑ More than $50,000.00

COURT PROGRAMS
- ☐ Arbitration
- ☐ Jury
- ☑ Non-Jury
- ☐ Other: ____
- ☐ Mass Tort
- ☐ Savings Action
- ☐ Petition
- ☐ Commerce
- ☐ Minor Court Appeal
- ☐ Statutory Appeals
- ☐ Settlement
- ☐ Minors
- ☐ W/D/Survival

CASE TYPE AND CODE (SEE INSTRUCTIONS)

other- Civil Rights

STATUTORY BASIS FOR CAUSE OF ACTION (SEE INSTRUCTIONS)

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)

IS CASE SUBJECT TO COORDINATION ORDER?

Yes	No
☐	☐
☐	☐
☐	☐

TO THE PROTHONOTARY:

Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant:

Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY Steven C. Feinstein, Esquire	ADDRESS (SEE INSTRUCTIONS) 2401 Penna. Ave., Ste 1C-44 Philadelphia, PA 19130
PHONE NUMBER (215) 232-1000 — FAX NUMBER (215) 232-0181	
SUPREME COURT IDENTIFICATION NO. 48,737	E-MAIL ADDRESS scf@palegaladvice.com
SIGNATURE [signature]	DATE 1-5-04

KANE & SILVERMAN, P.C.
By: Steven C. Feinstein, Esquire
Identification No.: 48737
The Philadelphian, Suite 1C-44
2401 Pennsylvania Avenue
Philadelphia, PA 19130
(215) 232-1000

Attorney for Plaintiff

ATTEST
JAN 0 5 2005
D. SAVAGE

Civil Rights

WILLIAM ROBERT BILL : Plaintiff : vs. : COMMONWEALTH OF PENNSYLVANIA: DEPARTMENT OF STATE POLICE : and : TROOPER VICTOR J. STERNBY : and COLONEL JEFFREY B. MILLER : c/o COMMONWEALTH OF : PENNSYLVANIA : DEPARTMENT OF STATE POLICE : Defendant :	COURT OF COMMON PLEAS PHILADELPHIA COUNTY DISCOVERY DEADLINE: OCT - 3 2005 TERM: **JANUARY 2005** NO.: 000523 ***MAJOR- NON JURY***

"NOTICE"

"You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you."

"YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH THE INFORMATION ABUT HIRING A LAWYER. IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

LAWYER REFERENCE SERVICE
One Reading Center
1101 Market Street
Philadelphia, PA 19107
(215) 238-1701
TTY - (215) 451-6179

"AVISO"

"Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las páginas siguientes, usted tiene veinte (20) días de plazo al partir de la fecha de la demanda y la notificación. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensaas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomará medidas y puede continuar la demanda en contra suya sin previo aviso o notificación. Además, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

"LLEVE ESTA DEMANDA A UN BOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELÉFONO A LA OFICINA CUYA DIRECCIÓN SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL."

Asociacion DeLicenciados DeFiladelfia
Servicio DeReferencia E. Informacion Legal
One Reading Center, 1101 Market St.
Filadelfia, PA 19107
(215) 238-1701
TTY - (215) 451-6179

KANE & SILVERMAN
By: Steven C. Feinstein
Attorney I.D. Number:48737
2401 Pennsylvania Avenue
Suite 1-C-44
Philadelphia, Pa. 19130

Attorney for Plaintiff

Civil Rights

WILLIAM ROBERT BILL 21498 Phelps Road Meadville, Pa. 16335 Plaintiff vs. COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF STATE POLICE 11176 Murray Road Meadville, Pa. 16335 and TROOPER VICTOR J. STERNBY 11176 Murray Road Meadville, Pa. 16335 and COLONEL JEFFREY B. MILLER c/o COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF STATE POLICE 1800 Elmerton Avenue Harrisburg, PA 17110	: COURT OF COMMON PLEAS : PHILADELPHIA COUNTY : TERM: : NO. : ***MAJOR NON JURY***

COMPLAINT

PARTIES

1. Plaintiff is an individual residing at the address above given.

2. Defendant, Commonwealth of Pennsylvania, Department of State Police, is a subdivision of the Commonwealth of Pennsylvania, with principle offices located in Harrisburg, Pennsylvania, but which has barracks throughout the Commonwealth of Pennsylvania generally and in Philadelphia, specifically, along with a business address as set forth above.

3. Defendant, Colonel Jeffrey B. Miller, is the highest ranking State Police Officer, with offices located at 1800 Elmerton Avenue, Harrisburg, PA 17110, and is in position to create and implement policy for both the State Police Department and the Commonwealth of Philadelphia.

4. Upon information and belief, Defendant Colonel Jeffrey B. Miller, is responsible for establishing the policies, practices, and regulations for the conduct of all employees of the State Police Department, including the State Trooper who arrested Plaintiff as more fully set forth herein.

5. At all times, Defendant, Colonel Jeffrey B. Miller, was acting within the course and scope of his employment.

6. Defendant, Trooper Victor J. Sternby, is a State Trooper, who at all times relevant hereto was assigned to the State Police Barracks in Meadville, Pennsylvania.

7. All individual Defendants are sued in their individual and official capacities.

8. At all times relevant hereto, all defendants were acting in the course and scope of their employment and under color of state law.

II. JURISDICTION AND VENUE

9. Jurisdiction and venue are proper in that all the events took place within the Commonwealth of Pennsylvania and Defendant, Commonwealth of Pennsylvania, Department of State Police, has a barracks in County of Philadelphia.

III. CHRONOLOGY OF FACTS

10. Plaintiff re-allege each and every allegation as set forth previously as if more fully set forth herein.

11. On or about February 22, 2003, Plaintiff was stopped on the side of the road sleeping, when Defendant, Trooper Victor Sternby, woke Plaintiff up.

12. At the time that Plaintiff was woken up by Defendant, Trooper Victor Sternby, Plaintiff was in a state of extreme intoxication.

13. After Defendant, Trooper Victor Sternby, woke Plaintiff he immediately began an investigation that lead to the arrest of Plaintiff for driving a vehicle under the influence of alcohol, in violation of 75 PaCSA § 3531.

14. Upon information and belief, on the date aforesaid, when Plaintiff was woken by Defendant, Trooper Victor Sternby, Plaintiff was in such a state of intoxication, that it should have been obvious to Defendant, Trooper Victor Sternby, that it was unsafe to allow Plaintiff to stand and/or walk on the roadway.

15. On the date aforesaid, despite the obvious intoxication of Plaintiff, Defendant, Trooper Victor Sternby, required Plaintiff to stand and/or walk on the roadway.

16. While Plaintiff was standing on the roadway, he was caused to slip and fall, striking his head, on roadway, and as result thereof, suffered severe and permanent injuries.

17. Defendant, Trooper Victor Sternby, knew or should have known that by requiring Plaintiff to stand and/or walk on the roadway, Plaintiff was at risk for falling and suffering injuries.

18. Plaintiff's state of intoxication was such that a lay person could or should easily have recognized the risk of danger of having Plaintiff stand and/or walk on the roadway.

19. At all times relevant hereto, Plaintiff should have been provided proper safeguards for his safety and/or provided proper care, medical or otherwise, while in the custody of Defendants against his will.

20. Defendants had actual knowledge of Plaintiff's state of intoxication.

21. Despite said knowledge Defendants failed to take necessary and available precautions to protect Plaintiff, as is required by Fourth, Eighth and Fourteenth Amendments to the United States Constitution. Freedman v. City of Allentown, 853 F.2d 1111 (3rd Cir. 1988).

22. As a direct result of all named Defendants' conduct described above, Plaintiff suffered great personal injury, and felt great pain and suffering and incurred medical expenses in an effort to treat and cure himself of his injuries, and has and may in future be hindered and prevented from attending to his usual daily duties and occupations, all to his great damage and loss.

23. Suspects and arrestees are at risk of grave physical harm, injury and death due to the failure of the Defendants to create or implement an adequate protocol for securing the safety of intoxicated individuals and training its personal in the safest manner in which to handle intoxicated individuals.

24. Plaintiff's accident and injuries were predictable and the product of the deliberate indifference of the Defendants.

25. This deliberate indifference on the part of Defendants resulted from official positions and policies and/or from well settled practices on the part of the Defendants so as to establish them as official policy.

26. Pursuant to the Fourteenth Amendment to the United States Constitution, Plaintiff had the right to be secure in his life and person and to proper medical care while in the custody of state officials. Harding v. Galyias 117 Pa. Cmwlth 371, 544 A.2d 1060 (1988). Diaz vs. Houck 159 Pa. Cmwlth 274, 632 A.2d 1081 (1993), Colburn v. Upper Darby Township, 838 F. 2nd. 663 (3rd Cir. 1988).

27. Pursuant to the Eighth Amendment to the United States Constitution, Plaintiff had the right to be secure in his life and person and to proper medical care while in the custody of state officials. Rhodes v. Chapman 452 U.S. 337, 101 S.Ct. 2392 (1981).

28. Pursuant to Article I § 1 of the Pennsylvania Constitution, Plaintiff was entitled to inherent and indefeasible rights, among which are those of enjoying life.

29. Defendants deliberately ignored and/or acted with deliberate indifference to Plaintiff's state of intoxication and the risk of injury.

30. Defendants deliberately ignored and/or acted with deliberate indifference to the Plaintiff's obvious physical condition and risk of injury that was posed by making him stand and/or walk on the roadway.

31. The actions and omissions of Defendants, deprived Plaintiff of his rights, privileges and immunities under the laws and Constitution of the United States.

32. In addition, the actions and omissions of Defendants deprived Plaintiff of his rights, privileges and immunities under the laws and Constitution of the Commonwealth of Pennsylvania, including the right to enjoy his life.

33. Upon information and belief, at no time relevant hereto did any of the Defendants reasonably believe that their conduct toward Plaintiff was lawful, privileged, or otherwise permissible under the laws or constitutions of the United States and the Commonwealth of Pennsylvania, or that the law regarding the rights of citizens such as Plaintiff was in any way unsettled.

34. Upon information and belief, all Defendants engaged in the aforesaid conduct for the purpose of violating Plaintiff's constitutional rights.

35. Upon information and belief, all of the actions of the Defendants have been with deliberate indifference and is routed in a matter of policy and practice.

COUNT I
VIOLATIONS OF THE FOURTH AND FOURTEEN AMENDMENTS TO CONSTITUTION OF THE UNITED STATES

36. Plaintiffs re-allege each and every allegation as set forth previously as if more fully set forth herein.

37. Each of the defendants had a duty to protect Plaintiff from injury stemming from his intoxication, while he was in their custody.

38. Each of the Defendants breached the duty of care owed to Plaintiff, by acting with intentional or deliberate indifference to the risk of injury and/or by failing to implement programs designed to protect individuals such as Plaintiff.

39. The State Troopers have not been trained to and are ill-equipped and unable to identify potentially dangerous situations involving intoxicated individuals.

40. Plaintiff's injuries were the direct and proximate result of the conduct of the Defendants in supervising and/or controlling Plaintiff when they knew that he was in such a state of intoxication that he presented a danger to himself.

41. Plaintiff's injuries were caused by the practices of Defendants.

42. Based on Plaintiff's level of intoxication, it was or should have been reasonably foreseeable to Defendants that Plaintiff would fall and injure himself if he was required to stand and/or walk on the roadway.

43. Despite this knowledge, Defendants, as a matter of practice and policy, required Plaintiff to walk on the roadway despite a high level of intoxication.

44. Defendants knew or should have known of the risks of grave physical harm and injury to which the Plaintiff was exposed by Defendants requiring him to stand and/or walk on the roadway while in state of extreme intoxication, in disregard of clearly established constitutional standards, principles, and law.

45. The actions of all named Defendants manifested a deliberate indifference to Plaintiff's constitutional rights in violation of the Fourteen Amendment to the United States Constitution and of Title 42, United States Code, Section 1983.

46. The actions of Defendants, acting under color of state law, deprived Plaintiff of his rights, privileges and immunities under the laws and Constitution of the United States, specifically the Fourth and Fourteenth Amendments guaranteeing that the Plaintiff's right to be secure in his safety.

WHEREFORE, Plaintiff requests judgment be entered in his favor and against Defendant, jointly and severally, in an amount of money in excess of $50,000.00 plus attorneys fees, interest, costs of suit, punitive damages and such other relief as the Court may deem just and proper.

COUNT II
VIOLATIONS OF THE EIGHT AMENDMENT
TO THE CONSTITUTION OF THE UNITED STATES

47. Plaintiffs re-allege each and every allegation as set forth previously as if more fully set forth herein.

48. The actions of all named Defendants manifested a deliberate indifference to Plaintiff's constitutional rights in violation of the Eighth Amendment to the United States Constitution and of Title 42, United States Code, § 1983.

49. The actions of Defendants, acting under color of state law, deprived Plaintiff of his rights, privileges and immunities under the laws and Constitution of the United States, specifically the Eighth Amendment prohibiting cruel and unusual punishment.

WHEREFORE, Plaintiff requests judgment be entered in his favor and against Defendant, jointly and severally, in an amount of money in excess of $50,000.00 plus attorneys fees, interest, costs of suit, punitive damages and such other relief as the Court may deem just and proper.

COUNT III
VIOLATIONS OF THE CONSTITUTION OF THE COMMONWEALTH OF PENNSYLVANIA

50. Plaintiffs re-allege each and every allegation as set forth previously as if more fully set forth herein.

51. The actions of all named Defendants manifested a deliberate indifference to Plaintiff's constitutional rights in violation of Article I § 1 of the Constitution of the Commonwealth of Pennsylvania.

52. The actions of Defendants, acting under color of state law, deprived Plaintiff of his rights, privileges and immunities under the laws and Constitution of the Commonwealth of Pennsylvania, specifically Article I, § 1.

WHEREFORE, Plaintiff requests judgment be entered in his favor and against Defendant, jointly and severally, in an amount of money in excess of $50,000.00 plus attorneys fees, interest, costs of suit, punitive damages and such other relief as the Court may deem just and proper.

Respectfully submitted,
KANE & SILVERMAN, P.C.

By: ______________________
Steven C. Feinstein, Esquire
Attorney for Plaintiff

VERIFICATION

I, Steven C. Feinstein, Esquire, attorney for Plaintiff, have sufficient knowledge and/or information and belief as to the matters stated in the attached pleading by reason of investigation and the parties' verification cannot be obtained within the time allowed for the filing of this pleading. The undersigned understands that false statements made herein are subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsifications to authorities.

Steven C. Feinstein, Esquire
Attorney for Plaintiff